IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.24 OF 2004

Trambaklal Ratilal Parekh &
Son Securities Pvt. Ltd. ... Petitioners.

vs.

GSKSV Ramana Murty, the proprietor of
M/s.Prabhakar Securities. ... Respondent.

Mr.Shailesh Shah i/b. Mansukhlal Hiralal & Co., for Petitioners.

Respondent in person present.

CORAM: D.K.DESHMUKH,J.

DATED: 26th April,2005

P.C.:-

1. By this petition, the petitioners challenge the Award made by the Appeal Bench of the Bombay Stock Exchange dated 13.8.2003. Before me, findings of the Arbitral Tribunal are challenged on three points viz. (i) findings in relation to 46500 shares of Kinetic Trusts and (ii) findings regarding 1000 shares of Software Solutions Integrated Ltd. and (iii) findings about 2000 shares of Vibra Automat Ltd.

2. So far as the findings regarding shares of Kinetic Trusts are concerned, in the Award the discussion is found in paragraphs 15 to 17. According to the learned Counsel for the petitioners, these shares were retained by the petitioners because the running account of the respondents was in debit and as the account was in debit, the petitioners in terms of provisions of bye-law 227 of Bombay Stock Exchange had a lien on those shares and therefore, he was entitled to retain those shares. Perusal of the Award, however, shows that this contention has been dealt with by the Appellate Tribunal in paragraph 17 of the Award. The Appellate Tribunal has held, as a fact, that on 11.6.1996 there was no debit balance and the same was the case on 20.6.1996. Therefore, the case of the petitioner that because of the debit balance in the running account of the respondent, the petitioner had lien on the shares, has been discarded. The learned Counsel appearing for the petitioners submits that the running account of the respondent was usually in debit and therefore, Arbitrators should have seen entire running account for the relevant period and not only the account which relates to two dates i.e. 11.6.1996 and 20.6.1996. Perusal of the record shows that there is no ground raised in the petition that those two dates in relation to which the appellate Arbitral tribunal in the Award has examined the running account, are irrelevant. In my opinion, in the absence of specific ground raised, the petitioners cannot be allowed to argue this ground for the first time at the time of hearing of the petition, specially when the respondent is not represented by a Lawyer.

3. So far as findings regarding 2000 shares of Vybra Automat Ltd are concerned, the learned Counsel submits that as the running account of the respondent was usually in debit, those shares were retained as the petitioners had lien on those shares. It is further submitted that in any case what could have been ordered was the delivery of the shares to the respondent and not the payment of purchase price. It is however, to be seen that the shares were de-listed and therefore, now handing over of the shares which are practically useless, will not serve any purpose. It is further to be seen that though it was the case of the respondent before the Appellate Tribunal that the shares were retained as a security, in fact the shares were not retained but were sold. The respondent pointed out to the Appellate tribunal that in the record of the Company the shares were transferred to Sanjiv N. Parekh and Kalpana S.Parekh. I do not find that there is any patent error of Law or fact committed by the Arbitral tribunal in recording the findings in relation to these shares.

4. The last ground made out by the learned Counsel appearing for the petitioner is in relation to 1000 shares of Software Solutions Integrated Ltd. According to the petitioners, these shares were purchased by petitioners on instructions of respondent, but the respondent did not pay the purchase price. The price of shares was going down and the respondent was not available to give instructions, therefore, shares were sold at a loss of Rs.49935/-, which was debited to his account. The learned Counsel submits that the appellate tribunal has held that the petitioners were not justified in selling the shares without

instructions from the respondent, and therefore, the appellate tribunal has directed the petitioners to pay to the respondent Rs.1,79,880/- which was the purchase price of the shares. The learned Counsel submits that there can be no justification for directing the petitioners to pay purchase price of the shares because that purchase price was never paid by the respondent to the petitioners. The learned Counsel also relied on the provisions of bye-law 247A(5) of the Stock Exchange Mumbai, to contend that the petitioners were justified in selling the shares. I have also heard the respondent on this aspect of the matter. So far as the provision of bye-law 247A(5) is concerned, it permit a broker to sell the shares if a client does not make payment of purchase price within a stipulated period after service of contract note. From the record, it does not appear that the petitioners had pleaded anywhere as to on what date the contract notes in relation to purchase of these shares were served on the respondent. Therefore, I do not find any error in the findings recorded by the Appellate tribunal that the petitioners were not justified in selling the shares without instructions from the respondent. However, I find considerable force in the arguments advanced by the learned Counsel appearing for the petitioners that the purchase price should not have been ordered to be paid by the petitioners to the respondent. The Appellate Tribunal has also held, negativing the claim of the respondent, that the respondent is not entitled to the bonus shares of these shares. The appellate tribunal has held that as the shares were sold without authority from the respondent, he would be entitled to either 1000 shares or its value. The Arbitrators have also held that the value can be worked out in

accordance with the provisions of bye-laws 244 of the Stock Exchange Mumbai, but the respondent who was the claimant has not placed any material on record which is required for calculating the value in accordance with the provisions of bye-law 244, and therefore, they have held that respondent is entitled to the purchase price of the shares of Rs.1,79,880/-. Thus, the appellate tribunal has not given any reason as to how the respondent becomes entitled to the purchase price of the shares when admittedly that price was never paid by the respondent to the petitioners. The appellate tribunal has rightly observed that the respondent are entitled to 1000 shares, but considering the present price of the shares, the respondent is not willing to accept the shares. Therefore, it was for him to place material on record to show as to what should be the value of 1000 shares. But he did not place any material on record and therefore, the respondent was not entitled to the value of the shares. Therefore, my in opinion, in view of the findings of the Appellate tribunal that the petitioners were not justified in selling the shares without instructions from the respondent, all that could have been said by the Appellate tribunal is that the petitioner was not justified in debiting the amount of loss i.e. Rs.49,935/- to the account of the respondent. In my opinion, therefore, the Award made by the Appellate tribunal in this regard is required to be modified. Thus, the Award made by the appellate tribunal directing the petitioners to pay amount of Rs.1,79,880/- is liable to be set aside, it is accordingly, set aside. In its place, it is directed that the entry debiting the amount of Rs.49,935/- in the account of respondent, be cancelled and the amount to which the respondent would be entitled under the

Award of the Appellate Tribunal be modified accordingly.

5. By consent of parties, the arbitration department of Bombay Stock Exchange is directed to calculate the amount to which the respondent would be entitled as per this modified award.

Petition disposed of.